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Re: Homestead Program
Our File No. M101.00279

Dear Ms. Wise:

I have before me your e-mail inquiry in which you have asked our opinion concerning the auditor's policy of dropping from the homestead exemption program those participants who fail or decline to submit a continuing application for the homestead exemption. Corrections are made for taxpayers who notice the change in their tax bill and subsequently contact the auditor's office. You have expressed concern that the current policy is at odds with the statute.

The Revised Code requires the auditor to send a continuing application to each person issued a certificate of reduction under the program. The application is to be used to report changes in total income that would have the effect of increasing or decreasing the property owner's taxable value, changes in ownership or occupancy, etc. R.C. § 323.153(C)(4). That subdivision continues by imposing upon the property owner desiring to utilize the program the duty to return the application only if there are pertinent changes.

The continuing application shall be returned to the auditor not later than the first Monday in June; *provided*, that if such changes do not affect the status of the homestead exemption or the amount of the reduction to which the owner is entitled under division (A) of section 323.152 of the Revised Code or to which the occupant is entitled under section 323.159 of the Revised Code, *the application does not need to be returned.* (Emphasis added.)

The only plausible interpretation of this statute which occurs to us is that the auditor is required to provide to the property owner the form upon which any such changes may be noted; but, unless there are changes, the property owner need not return the form.

There is no provision here for terminating a property owner's participation in the program for failure to return the continuing application. In fact, the scheme provided by the General Assembly anticipates that this will be an ongoing program

and places the burden for notification of changes on the taxpayer. In R.C. § 323.153(A)(1) we find the following:

Such an application constitutes a *continuing application* for a reduction in taxes for each year in which the dwelling is the applicant's homestead and the amount of the reduction in taxable value to which the applicant is entitled does not exceed either the amount or percentage of the reduction to which the applicant was entitled for the year in which the application was first filed.

Again, in subdivision (A)(2) we find:

Such an application constitutes a continuing application for a reduction in taxes for each year in which the dwelling is the applicant's homestead.

Clearly, unless there are changes in the taxpayer's status, no further application is required.

Furthermore, in subdivision (A)(3) we find the following:

Failure to receive a new application filed under division (A)(1) or (2) . . . is *prima-facie evidence that the original applicant is entitled to the reduction in taxes* calculated on the basis of the information contained in the original application. . . . (Emphasis added.)

If, therefore, you do not receive a returned application, you are to assume, until there are indications to the contrary, that the taxpayer is entitled to the tax reduction.

The burden is on the taxpayer to make corrections to the record concerning his entitlement to the tax reduction. In subdivisions (C)(1) and (2) we find:

(C)(1) If, in any year after an application has been filed under division (A)(1) or (2) of this section, the owner does not qualify for a reduction in taxes on the homestead or on the manufactured or mobile home . . . *the owner shall notify the county auditor that the owner is not qualified for a reduction in taxes or file a new application under division (A)(1) or (2) of this section.*

(2) If, in any year after an application has been filed under division (A)(1) of this section, the occupant of a homestead in a housing cooperative does not qualify for a reduction in taxes on the homestead, *the occupant shall notify the county auditor that the occupant is not qualified for a reduction in taxes or file a new application under division (A)(1) of this section.*

(Emphasis added.)

Under this statute, failure to return the continuing application is not a reason for the auditor to revoke the taxpayer's homestead exemption status. In fact, the next subdivision, (C)(3), specifies what the auditor is to do when he finds that the property owner is not entitled to the tax reduction.

(3) If the county auditor or county treasurer discovers that the owner of property not entitled to the reduction in taxes under division (B) of section 323.152 of the Revised Code failed to notify the county auditor as required by division (C)(1) of this section, a charge shall be imposed against the property in the amount by which taxes were reduced under that division for each tax year the county auditor ascertains that the property was not entitled to the reduction and was owned by the current owner. . . .

Other portions of that subdivision deal with the charging of interest and other procedural matters. You should familiarize the appropriate staff members with this statute.

Finally, divisions (D)(E) and (F) specify criminal offenses for the taxpayer for knowingly making a false statement, knowingly failing to notify the auditor of changes, and knowingly making false statements or certifications concerning the physical or mental condition of a taxpayer for the purpose of obtaining an exemption. Under R.C. § 323.99, each of these offenses is a fourth degree misdemeanor.

In conclusion, we must say that your concerns are well founded. The current policy of dropping taxpayers from the homestead exemption for failure to return a continuing application is not grounded in law. In fact, failure to receive a continuing application is evidence, on its face, that the taxpayer is entitled to the same status previously held. Discovery of facts to the contrary triggers other remedies available to the auditor and potential criminal penalties for the taxpayer. I trust this answers your question. If I may be of further service, do not hesitate to write or call.

Very truly yours,



David M. Bridenstine
Assistant Prosecuting Attorney

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